

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

GOOD LAD CO.

v.

B&W ASSOCIATES

CIVIL ACTION
NO. 98-6612

M E M O R A N D U M

Broderick, J.

February 5, 1999

This is a declaratory judgment action by Plaintiff Good Lad Co. ("Good Lad") against Defendant B&W Associates ("B&W") arising out of an agreement concerning two adjacent properties on Tioga Street which purports to create two easements which burden the property owned by B&W ("Property 1") and which benefit the property owned or occupied in part by Good Lad ("Property 2"). Under the terms of the written agreement, entered into by the Philadelphia Authority for Industrial Development ("PAID"), B&W's predecessor, and the previous owner of Property 2, two easements are created. One easement, the "truck easement," concerns the use of a loading dock and driveway. The other easement, the "roof easement," concerns a ramp and parking facility on the roof of Property 1. The agreement provides for payment of certain costs related to the easement by the owners of Property 2 and provides that the owner of Property 1 has the right to deny access to the roof easement under certain circumstances. B&W

filed an action in this Court on November 30, 1998, captioned B&W Associates v. Rona Goldstein et al., Civil Action 98-6241, against the owners and operators of Property 2 to recover for monies allegedly expended in maintaining the easement areas, to have the roof easement declared invalid and a taking, in violation of its due process rights, by PAID. Subsequent to filing that action, B&W closed access to the roof easement until disputed issues are resolved.

In response to B&W's complaint, Good Lad filed a counterclaim alleging a breach of the easement agreement and also alleging fraud. Good Lad also filed the instant action as a separate declaratory judgment action against B&W seeking to have B&W's action in closing the roof easement pending payment of certain bills by the Property 2 Defendants declared invalid. Presently before the Court is B&W's motion to dismiss the instant declaratory judgment action and Good Lad's response thereto. B&W alleges that the instant action should be dismissed on the ground that it is duplicative of the counterclaim brought by Good Lad against B&W in Civil Action 98-6241. For the reasons stated below the Court will grant B&W's motion.

Declaratory judgment actions are governed by 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57. Section 2201 provides, in relevant part: "In a case of actual controversy within its jurisdiction, ... any court of the United States, upon

the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). The Advisory Committee Notes from the 1937 adoption of Federal Rule of Civil Procedure 57 provide that "[a] declaratory judgment is appropriate when it will 'terminate the controversy' giving rise to the proceeding" and that "[w]hen declaratory relief will not be effective in settling the controversy, the court may decline to grant it."

The Supreme Court of the United States has made clear that whether or not to entertain a declaratory judgment action is in the sound discretion of the district court. Wilton v. Seven Falls Co., 515 U.S. 277, 282 (1995). "In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." Id. at 288. The Court's discretion to decline to hear a declaratory judgment action arises at the outset because "[i]f a district court, in the sound exercise of its judgment, determines after a complaint is filed that a declaratory judgment will serve no useful purpose, it cannot be incumbent upon that court to proceed to the merits before staying or dismissing the action." Id. at 288.

In the instant action Good Lad seeks a declaratory judgment

that B&W is violating its roof easement and that it is entitled to immediately begin using the easement again. Good Lad alleges that this easement arises out of the written instrument heretofore described that forms the basis of B&W's complaint against Good Lad and other defendants in Civil Action 98-6241. Good Lad has filed a counterclaim against B&W in Civil Action 98-6241 which, inter alia, alleges that B&W is in breach of the easement agreement by blocking Good Lad's access to its alleged roof easement. As Good Lad admits in its response to this motion, the relief sought in the instant action is a part of the relief it seeks in its counterclaim in Civil Action 98-6241. (Document No. 3 at 5).

It is clear from the pleadings in the instant action and in Civil Action 98-6241 that both actions involve the construction and validity of the written "easement agreement." In order to grant the relief requested by Good Lad in this action, this Court would be required to adjudicate the validity of the easement agreement and to determine each party's rights and duties pursuant to that agreement. The Court is being asked to make an identical determination in Civil Action 98-6241. However, adjudicating the rights and duties of the parties in the instant action would not resolve the entire controversy because Civil Action 98-6241 contains issues and parties not present in the instant action.

The Court finds that Good Lad's rights will not be prejudiced by the dismissal of the instant action. On the same day that Good Lad filed a counterclaim in Civil Action 98-6241 which raises the same issues and seeks the same relief sought here it filed the instant declaratory judgment action. Thus, a stay of this action is not necessary to preserve or protect Good Lad's claims. Forcing B&W to litigate the same issues in two separate actions would be neither just nor economical and would be an unnecessary encumbrance on the judicial system. Allowing the validity of the easement and the rights and duties of the parties thereunder to be determined without the inclusion of other parties to the easement, who are already parties to Civil Action 98-6241, could be prejudicial to the interests of those other parties as well. The Court finds that Good Lad's instant action is more properly a compulsory counterclaim in Civil Action 98-6241 under Federal Rule of Civil Procedure 13(a) in that the claims arise out of the same transaction or occurrence as the underlying action. See, e.g., Abbot v. Neal, Civ. A. No. 90-6619, 1991 WL 42409 (E.D.Pa. March 26, 1991). That counterclaim has already been filed and that counterclaim is Good Lad's proper cause of action. Therefore, the Court, in the interest of judicial economy and fairness to the parties, will exercise its discretion and dismiss Good Lad's declaratory judgment action.

An appropriate Order follows.

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ORDER

AND NOW, this 5th day of February, 1999; Defendant B&W Associates ("B&W") having filed a motion to dismiss Plaintiff Good Lad Co.'s ("Good Lad") complaint for a declaratory judgment on the ground that it is duplicative of the counterclaim filed by Good Lad against B&W in an action currently pending before this Court, B&W Associates v. Rona Goldstein et al., Civil Action 98-6241; Good Lad's response and B&W's reply thereto now being before the Court; Good Lad's complaint arising out of the same operative facts and seeking relief also included in its counterclaim in Civil Action 98-6241; for the reasons stated in this Court's Memorandum of February 5, 1999, this Court exercising its discretion to dismiss the instant action;

IT IS ORDERED: The motion of Defendant B&W to dismiss

Plaintiff Good Lad's declaratory judgment complaint (Document No. 2) is **GRANTED**. The dismissal of the instant action is without prejudice to Good Lad's counterclaim in Civil Action 98-6241.

RAYMOND J. BRODERICK, J.